Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Exclusive Service Contracts For the Provision	)	Docket No. 07-51
Of Video Services In Multiple Dwelling	)	FCC 07-32-189A1
Units and Other Real Estate Developments	)	
	)	

To: The Commission

Reply Comments Of The Independent MultiFamily Communications Council (IMCC) In The Further Notice of Proposed Rulemaking

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Reply Comments of IMCC

The Comments submitted by IMCC in the NPRM stage and in the FNPRM stage of this proceeding were lengthy and addressed many topics, including most issues raised by other parties in their filings. Therefore, these Reply Comments will be brief.

A. Parity of Treatment

The Commission is charged with the responsibility of enhancing competition in the delivery of video products and services for MDU residents. It seeks to do so with regulatory parity among providers. Given the influence of factors such as past regulatory decisions, which strongly favor franchised cable companies (MSOs) and common carriers (referred to in this filing as ILECs), exact parity cannot be achieved, but equity of result is attainable. Although exact parity is a goal, but not attainable, virtual parity is a productive substitute, and that is attainable. To prohibit PCOs from entering into and enforcing Right of Entry Agreements (ROEs) that include exclusive access or service provisions would not produce parity. Continued use of exclusive contracts by PCOs is an element helping to allow equity of opportunity. Parity is important but should not be the cement that binds the Commission in deciding what is prudent and productive in fostering video competition.

As Robert Pepper, former Chief of the FCC Office of Policy and Planning, observed:

> There are two kinds of asymmetric regulation. One is where you have firms that are similarly situated and treated differently. That is a bad thing; it leads to all kinds of distortions. Likewise, if you have two firms that are not similarly situated and are radically different in their circumstances, but you treat them the same, that also leads to all kinds of distortions.[1]

B. PCO Financial Model

The IMCC Comments include a description of the model and means by which PCOs are financed and are then able to provide competition with other MVPDs. It is made clear that without the right to enter into and enforce exclusive access and service provisions in ROEs that PCOs will not survive long in the market and that the benefits that they provide to MDU residents will be lost.

We believe it useful for the Commission to consider several letters from lenders submitted for the record in this proceeding that relate directly to the above assertions. For example, Mr. David Ligon, an investment banker, describes in some detail the factors and influences that are evaluated before a lending institution will provide financing to a PCO. This letter, attached,

[1] R. Pepper, Policy Changes Necessary to Meet Internet Development, 2001 L. Rev. M.S.U.- D.C.L. 255, 257

includes a description that reflects the realities of financing and why PCO financing is precluded unless exclusive access provisions are included in ROEs. Due to the fact that PCOs do not enjoy many of the advantages of much larger and better-financed MVPDs, PCOs can not assure lenders of a predictable and recurring cash flow, the sine qua non of financing, without such provisions in ROEs.

C. Factors Requiring Exclusive Service Provisions

IMCC has been asked, Why do PCOs need exclusive access provisions if they provide high quality service and are in demand by MDU owners and residents? There are numerous responses to that question. PCOs provide benefits sought by MDUs and for residents. However, the large providers have advantages that PCOs must overcome if they are to be in demand and that is difficult to do. In spite of the following advantages of the large providers not enjoyed by PCOs, PCOs are still able to attract new MDU ROEs and individual subscribers. To do so PCOs must provide high quality products at lower rates and that starts with the right of PCOs to enter into and enforce exclusive contract provisions. Without that right, no matter how skilled PCOs are in attracting and keeping subscribers, PCOs will probably go out of business. Without that right in the past PCOs would not have the number of ROEs and subscribers that they do serve.

PCOs attract MDUs for contracts and residents as subscribers because they are close in proximity to the MDU community, are more nimble than the large providers, provide channel line-ups and other products based on the MDU community demographics, compete through provision of the triple-play and charge lower rates, among other reasons. It is accurate to say that whatever benefits PCOs offer are due to exclusive contracts. Without them this form of competition would not exist. But that is only part of the answer to the question. The other part of the equation to answer the question is to examine what PCOs must overcome to provide those benefits.

The following summarizes some of the advantages of the large providers that PCOs must overcome:

1. The sheer size of the large MSOs and ILEC's allows them to enjoy economies of scale that generate advantages for them to compete in the MDU market space. Just to compete the PCO must overcome these advantages and only then can it offer products and services that give it the distinction that MDU owners and subscribers require.

a. The size difference between PCOs and the large MVPDs automatically produces many advantages for those providers. Perhaps it is comparable to the difference between Walmart and the local, non-chain stores. That size and market power difference is not illegal but it causes dislocations in the market that many small towns or cities find disturbing to the entire local economy, a factor leading many cities to help balance the economic field by providing support to the local stores. That of course does not happen for PCOs.

b. Economies of scale allow the big providers to acquire programming at significantly lower cost than PCOs pay for the same programming. This differential is commonly in the range of 25%. In as much as programming costs are some 30% of all costs, this factor is a major influence in the financial equation. So, regardless of the quality of the products provided by the PCO it starts at a significant disadvantage.

c. In a similar fashion, the large providers are able to acquire hardware at significantly lower prices.

d. This market power means that large companies are able to acquire numerous forms of advertising at rates far below what the PCO can afford.

e. MSOs and ILECs have plant distribution facilities that require them to pay for only one satellite farm, one coaxial cable or fiber distribution backbone and one set of programs available for all subscribers in an entire service area. PCOs must build infrastructure unique to and different from every other MDU building served. Obviously, the cost of this difference is substantial. In addition, in spite of the inherently higher costs to do so, PCOs commonly provide channel line-ups based on each community's demographics.

2. The above advantages generate for the large providers a market power defined by numerous parameters. This then allows MSOs and ILECs to capitalize on these advantages and employ tactics that put PCOs at a distinct disadvantage.

a. These companies serve large geographic areas allowing them to cross-subsidize one type of customer or one type of housing with the customers and types in distant locations.

b. This market power allows such providers to offer revenue sharing and door fees that PCOs cannot do and if they attempt to match the amounts then the PCOs could no longer meet their financial requirements.

c. The above produce a major advantage for the large companies. They can surmount many financial obstacles and persist due to lower costs and greater revenue generating capacity. They can out-persist PCOs.

d. Not having market power means that to compete the PCOs must provide products and services that are better than their competitors. They not only endeavor to do so, but in fact do so. Yet, their presence in the marketplace is dependent on the use of exclusive contracts.

3. The large companies have utilized regulatory advantages to their benefit causing a diminished ability of PCOs to grow in the market, no matter how skilled they are in providing quality products and services.

a. A fundamental difference between PCOs and the large companies is that the latter companies have been allowed, for many years, to cross public rights-of-way, whereas PCOs are not allowed this advantage. This means competitors of PCOs can lay cable or fiber down all streets in a service area and simply add runs up to each single-family home or entire MDU communities. That then means that the large companies have a market that includes every potential customer in that area. This clearly gives them a market far larger than any PCO may pursue. This of course defrays costs of the large providers lowering their cost per passing and making it much more difficult for the PCO to compete. This again is an example of how PCOs must over come the advantages of their competitors, no matter how skillfully the PCO may serve customers.

b. In a similar way, until recently, the large cable companies have had a major benefit provided by the government in as much as they were given a franchise that in virtually all jurisdictions meant they were the only provider in town. Over the years they used this advantage to develop market strength, staying power and other characteristics of a monopolist. PCOs have never enjoyed any such government protection.

c. There are no longer Commission regulations, formerly known as uniform pricing requirements, that prevent the large companies from charging customers in one building a different rate than customers in a different building, even if just across the public right-of-way or next door and even if arguably predatory. Such market pricing power makes it is easy for the major providers to wait until the PCO begins to provide service in an area or in a specific building and then reduce its customer rates to a level that precludes the PCO from competing and maintaining financial viability. Thereafter, the MSO or ILEC can increase its rates to any level it sees fit and the rules of competition will not function because there is no PCO present to force the large providers to restrain their rate increases.

d. Mandatory access statutes in some 16 states give a distinct advantage to any company allowed to utilize their force, virtually never the PCO. IMCC in the past has provided information to the Commission showing that there is less competition from PCOs in those states. This virtually guaranteed monopoly for MSOs is another example of how it is more difficult for the PCO to attract subscribers, no matter the quality level of their products and services.

e. As another example, the Commission dramatically reduced the right of PCOs to use the 18 GHz portion of the radio spectrum for microwave transmission from one MDU building to other buildings. Prior to that decision, this form of technology produced a major cost savings for PCOs. Without this technological way to reduce cost, PCOs find it more difficult to provide its products at rates that attract customers, no matter how efficiently the PCO operates.

The above categories and examples are intended to demonstrate that PCOs must overcome many advantages enjoyed by the large companies. PCOs do accomplish that goal. That benefits MDUs and residents. To do so PCOs must be in business and that is dependent upon their right to enter into exclusive contracts.

D. PCO Competitive Clauses

Despite the above, PCOs vigorously compete. One benefit realized by PCO subscribers ensues from contract clauses referred to as Comparability Provisions or Service Level Agreements. Numerous letters in the record show that a majority of PCO-MDU ROEs include such provisions. These contract provisions require PCOs to provide products and services that are comparable to or better than those provided by other MVPDs in the area or the MDU owner can terminate the ROE. Because of their length such provisions are not quoted here but are included in the above referenced letters. These PCO requirements normally cover customer rates, service level standards, programming line-ups, technologies used and products delivered. Each of these provisions is detailed sufficiently so that MDU owners and residents can see what the PCO is required to do and if not the PCO must either bring their products and services up to that level or the contract can be terminated. Many of these provisions say that the PCO must provide comparable or superior products and sevices to any other MVPD in the area. And this is not isolated to few ROEs. The President of IMCC, Mr. Bryan Rader, with many years of experience as an owner of a PCO, and now a consultant with PCOs and MDUs, asserts in his letter that considerably over 50% of all ROEs nationwide include such provisions and that MDUs enforce them.

E. Evaluating Letters for the Record

Many letters or views included in the record of this proceeding were submitted by residents of one community in Florida called the Live Oak Preserve (LOP). IMCC offers the following observations about these letters:

1. There is nothing wrong with residents or subscribers submitting views en masse, even if that campaign is organized by only a portion of a community. In fact, that activity is part and parcel of the democratic and free enterprise systems.

2. IMCC's understanding is that virtually all of the letters come from a specific area within LOP which is represented by three Home Owners Associations (HOAs). There are seven HOAs in LOP.

3. The letters complain vociferously about the relationship between the original community developer and the service provider, Century Communications. We also understand that complicated litigation is being pursued by numerous parties, including HOAs within LOP. We assume none of the letters were submitted in an effort to influence that litigation.

4. Most of the letters state that Century Communications is providing substandard service and is not providing the products that the ROE requires. That may be the case, or it may not. Regardless, because these letters may have an influence on the instant proceeding we urge the Commission to look into the allegations to see if they have merit, or not. Such inquiry may also help the Commission to determine if the complaints reflect a previous situation or if the provider is now complying with what the ROE requires for products to be delivered and what the provider is doing to improve its level of service.

5. It appears as if most of the subscribers in LOP live in single-family detached homes. There is no reason a provider should not serve those homes, but that is not the normal service model for PCOs because they most often provide service in traditionally defined MDUs, that is more than one single living space under one roof.

6. Many of the letters are highly critical of the provider because the ROE includes a duration provision of some, as it is asserted, 15 or 25 or 50

years. It is difficult to understand how one ROE could have numerous terms of service, certainly for those durations. Regardless, it is not merely an assertion, it is fact, that MDU – PCO ROEs have durations of far fewer years.

7. Although, to our knowledge, there are no existing laws or regulations that prohibit PCOs and community developers from being in a business relationship, that is far from common and is the exception.

8. The letters indicate that there is a swirl of controversy surrounding the original developer, the HOAs, control of the HOAs, who signed the ROEs, their current enforceability, et cetera. IMCC has no views regarding those matters. It is the IMCC view, consistent with the information supplied for the record by the Community Associations Institute (CAI), that HOA Boards of Directors are most often elected by their peers and that the Boards should and do represent the desires of the HOA members, another example of democratic decision-making in a free enterprise environment. CAI represents many thousands of HOAs and is of the view that such a system is functional on a nationwide basis.

9. Apparently, as asserted in many of the letters from LOP residents, that system is not in place at LOP, or is functioning poorly. If it were functioning properly, the ROE would not have been signed or continued in the first instance, or the HOA would require the service provider to fulfill its legal obligations regarding products and services.

10. Many states have statutes prohibiting a community developer from entering into contracts that bind the hands of the HOA once the property is turned over to the HOA. Such statutes say that if the developer endeavors to do so that contract is null and void. It is difficult to understand in the LOP situation if some or all sections of the community have been turned over to the HOA(s) or not. If they have, then the HOA should have the power to terminate some or all of the ROE. Perhaps that is the core of the issue that needs to be addressed. A Florida statute relevant to this matter allows condominium associations, HOAs, to terminate cable contracts entered into by a developer if over 50 percent of the unit owners vote to do so. 718.115, F.S.

11. Related to this issue is that numerous of the letters assert that many PCOs are owned by or are in affiliate corporate relationships with developers. IMCC is not aware of that and does not think that the Commission has information to buttress that assertion. Perhaps those residents could supply such information.

12. IMCC requests that the Commission understand that the letters from LOP residents represent the views of some residents in one community and that those views, even if accurate, should not be assumed to represent the attitudes of subscribers in other communities served by PCOs.

One final observation. It is common that customers complain, but rare that customers praise. Perhaps that is a part of the human condition. Certainly that is the case in service industries. That may also be the case with government agencies. For instance, it would be interesting to know how many letters of praise are received by the FCC as opposed to letters of criticism.

Conclusion

For the reasons stated in previous filings and in this filing, IMCC urges the Commission to adopt a Report and Order that allows Private Cable Operators to continue the use and enforcement of exclusive access and service contract provisions.

Submitted on March 7, 2008

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February 27, 2008

Federal Communications Commission
C/O Marlene Dortch
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Re: MB Docket No. 07-51

Dear Ms. Dortch,

Please include this letter in the record for the above referenced matter.

Background:

For the past 23 years I have been directly involved in extending commercial credit to borrowers in a wide variety of industries. In 1985 I started working as a commercial lender for Bank of America and subsequently worked for several nationally chartered banks (First Interstate Bank, Wells Fargo Bank, Union Bank of California) increasing my responsibilities for underwriting commercial loans. Prior to departing Union Bank of California in 2006 I was SVP & Manager of the Commercial Banking Products Division, responsible for asset based lending, cash flow lending to select sponsored clients, leasing, and global trade related products. In late 2006, I joined Emporia Capital Management, which provides commercial loans outside of a Bank environment, as a Managing Director responsible for originating commercial loans in the U.S. We presently serve approximately 200 borrowers and manage roughly $1.5 billion in capital.

In the ordinary course of business while employed at Union Bank of California, N.A in the late 1990's and early in the current decade I conducted research and study into the Private Cable Operator ("PCO"), Franchise Cable Operator ("FCO"), and satellite television (DirecTV, Dish, etc.) industries for the purpose of considering requests for loans by small, entrepreneurial individuals interested in starting a PCO to better serve consumers residing in apartment buildings and other multi-family residences ("MDU"s).

Since my departure to Emporia Capital Management in late 2006 I have not been professionally involved in any way with PCO's. I considered extending credit to a PCO operator in July/August of 2007. During the course of that diligence effort I uncovered references to the March 27, 2007 Notice of Proposed Rulemaking in the standard internet research we conduct prior to issuing commitments. This notice inferred to me that a significant change in the value of collateral offered for the loan could occur in the near future. I viewed this as anti-competitive and a significant new threat that had not existed in my prior dealings. Other lenders provided the financing for that particular PCO on terms and conditions I was not willing to provide. Whether or not these lenders were cognizant of this potential issue or understood its ramifications is unknown to me. In essence, I have already acted on the opinions I state in this letter as a provider of capital.

Today I do not extend credit to any PCO's nor am I directly personally involved with any PCO – I do not have a horse in this game. I have not actively followed the debate since August of 2007. An executive for a PCO contacted me this week and asked if I would independently provide comments on the proposed rules. No person or company is advising me on what to say, or what not to say and I have not previewed this letter with any person.

Opinion:

As an independent observer I am strongly opposed to new rules that would both:

- Void existing exclusive agreements PCO's have with MDU Owners
- Prevent PCO's from entering into new exclusive agreements with PCO's

While rules like this appear to foster competition on the surface, they will have the exact opposite effect. They will be anti-competitive in general, disrupt the healthy influence for innovation and service PCO's have fostered, and I believe moderate to lower income MDU tenants will, in particular, suffer decreased quality of customer service and choice.

While I believe that PCO's should continue to be able to enter into exclusive agreements, if the FCC rules differently I strongly believe standard grandfather protections should exist with respect to previously signed agreements.

Government should be extremely cautious regarding retroactive policy changes. The business community regularly weighs, underwrites, and prices the risk that future policy changes may impact decisions made in the present. The business community rarely has to deal with retroactive policy changes that would have impacted prior capital allocation and risk decisions. This type of retroactive policy decision essentially re-writes history, dramatically increasing financial uncertainty, and negatively impacting risk-taking which is a vital part of our economic system.

To be certain, if the FCC made this one decision, the consequences would not be "earth-shattering" beyond the PCO community (which would suffer significantly), but the precedent is one to be avoided. Government should not fear retroactive policy changes related to civil rights (the Supreme Court, and subsequently the Congress and Executive Branches rendered such fear and compromise unconstitutional with respect to voting laws that coined the phrase "grandfather clause"). No such civil right issue exists in this case, and government should tread with extreme caution and balance in issues like those before the FCC. The concept of the grandfather clause was tailor made for this type of situation.

My opinions are based on the following key points:

A. **PCO's, in general, have inferior access to capital relative to their larger competitors.** Higher capital costs force PCO's to compete based on innovation, creative and high quality product offerings, and superior customer service quality – <u>all of which benefit consumers and force larger providers to respond in turn.</u>

   - *Economic theory dating back to the late 1800's recognizes the importance of "marginalization". Service quality, diversity of product offering, and price are all set on the margin. While PCO's are relatively small market participants, they represent an important balancing market force, moving the margins of service quality, innovation and pricing options into consumer friendly territory. Simply compare the pricing and packaging choices MDU tenants have today vs. 5 or 10 years ago and this fact is clear.*

B. **Exclusive agreements are the only asset enabling PCO's to attract reasonably priced debt and equity capital.** Without these agreements, existing debt facilities may be revoked and new ones will be difficult to obtain or prohibitively expensive.

   - *Capital providers to PCO's will seriously weigh the risk that large, well capitalized companies with access to public markets and the cash flow of their entrenched position and significant customer base will use this advantage to selectively crush PCO's with pricing incentives, compromising debt or equity capital provided to the PCO. These pricing incentives, <u>which it is important to note may not accrue to the benefit of consumers, merely the property owners,</u> will most certainly vanish or diminish as soon as the PCO's are eliminated or rendered powerless.*

C. **Niche PCO players are agile, able, and willing to overcome barriers to profitably serve "B" rated buildings.** Tenant churn in MDU's (and attendant costs/service burden) relative to the single family dwelling markets, and the difficulty and cost involved in properly updating older buildings results in large scale, relatively new or brand new construction ("A" rated or of prime worth) attracting the most competitive attention for service offering and quality of service.

- *If PCO influences diminish, or their access to capital is impaired, it is my opinion that <u>"B" rated buildings and facilities will disproportionately suffer from PCO absence. These "B" rated buildings often serve a higher proportion of low to moderate-income tenants.</u>*

- *<u>PCO's cannot force MDU owners to renew exclusive contracts.</u> These exclusive contracts represent a fair risk return for the capital deployed by the PCO to upgrade MDU infrastructure, product offerings, and services. This exclusivity has been determined via a free market transaction. The same market forces that spur innovation and product breadth and quality occur again when the contract expires. It is important to note that Government has historically sanctioned this type of activity (fair risk return for infrastructure spending) in utility, communications, cable and other industries.*

D. **A competitive process exists in the awarding of an exclusive contract.** The contract is not evidence of a lack of competition, but encourages fierce competition and capital investment by market participants – both of which benefit consumers. The MDU owner can obtain a contract with anyone they choose.

E. **The only person(s) permanently bound by an exclusive contract is the MDU owner.** MDU tenants have the free choice of whether or not to rent an apartment. MDU tenants are aware of choices when selecting a place to live, and can within reasonable periods of time move if they believe their choice is unfairly restricted. MDU owners have no economic incentive to execute a new exclusive contract that places existing tenants in a worse position than before the contract was executed. MDU owner incentives are to improve offerings for existing tenants or risk increased vacancies. PCO products and services have been a benefit often used by MDU owners to market apartments.

When I first researched this industry and began lending to a start up PCO I did so based on this foundation:

- <u>Customer service vacuum</u>. I have extended credit to a wide variety of manufacturing, distribution, and service based enterprises operating in diverse industries. I have never seen such widespread customer dissatisfaction (bordering on a desire to "get even") with the service, product offerings, and approach large FCO's and other oligopolistic organizations/cultures had to a market. From casual conversations, to well-heeled research reports, to members of Congress making a show of their cable experiences the quality levels were pathetic. This dissatisfaction was the impetus for MDU owners and tenants to cooperate in providing unknown entities an opportunity to compete. I believed that more nimble, entrepreneurs with MDU related experience could succeed and influence the industry for good. All of this equated to reasonable demand. Without this I did not think the small PCO could effectively compete for contracts.

- Collateral. My original loans were small and based on the credit standing of the owner pledging his personal worth. The capital required quickly outstripped that worth. In order to justify the larger loans needed to continue expansion, the bank had to set a collateral value on the exclusive contracts. The contract is the only way that I, the lender, had confidence that the investment in infrastructure to improve service and product could reasonably be repaid. A key credit concern was a backlash response from these larger FCO's or other new telco entrants with significant capital. The smaller PCO's were starting to influence the market in a way that forced these larger players to increase service and product quality. The contract provided some protection that I as a lender could rely on to offset this risk.

  There is no other worthwhile collateral outside of these contracts. It is impractical for lenders to go into apartment buildings and rip out cabling and infrastructure. Uninstalled, this equipment has little value and the cost to extract it would far exceed whatever value might exist. Furthermore, the disruption to tenants may engender bad press for the lender.

  Without collateral, in an industry environment where competitors are far larger than your borrower, loans are simply not made – or made at a price that makes the borrower uncompetitive. Without the economic benefits of leverage, equity returns are difficult to obtain. Without collateral both debt and equity capital are severely impaired. The only meaningful collateral that also mitigates the risk of larger competitors concentrating efforts to eliminate the smaller PCO is the exclusive contract.

  We specifically covenanted our loans based on the value of contracts and maintenance of certain loan to contract value related measures.

- Nimble operations. The PCO had a flat management structure. Owners developed fast track methods to evaluate all types of MDU buildings (A & B & C types) and accurately estimate costs. Instead of a "one size fits all" approach often adopted by larger companies, they were able to demonstrate to me, the lender, flexible systems and quick appropriate oversight to approving capital outlays. This was important as I believed larger competitors would focus on the A quality properties and the PCO needed to serve the marginal properties in order to build scale.

- Exclusive contracts did not appear to result in taking advantage of consumers. One way or another, if customers are not happy my debt repayment would be threatened – either through higher costs to serve those customers or litigation. The PCO does not have a large franchise with legal staff and strong resources to withstand litigation. The only way PCO's can avoid this risk is to provide competitive products and great service in the first place. Furthermore, if the PCO did not continue to gain regional scale, small though it may be, it could not meet desired equity returns and would fail – a powerful self-interested incentive to serve consumers well.

  Without maintaining high service quality, the relatively untested, unknown PCO would not maintain a reputation or differentiating factor necessary to win new business with MDU owners. MDU owners are generally savvy and require some flexibility to negotiate, exit or potentially terminate the contracts for service quality failures that go un-remedied. MDU owners are highly motivated to ensure service quality remains high (otherwise they incur costs related to tenant complaints and reduced tenant desirability related to other properties).

  My ongoing diligence revealed very high levels of customer satisfaction and strong demand after the contracts were signed. Unlike the predecessor larger organizations, which treated MDU tenants and property owners equally with poor service (w/n a long term exclusive arrangement was in place), the PCO came up with higher quality products, creative and affordable programming packages, and better approaches to consumer education and customer service. They delivered on these promises resulting in strong word of mouth marketing and momentum that eventually aroused the attention and concern of larger organizations.

In summary, both in my initial research and underwriting as well as in the ongoing study of the industry and evaluation of increasing loan commitments, the exclusive contract was a bedrock foundation for extending credit and a feature that did not result in adverse customer service.

I suspect that the PCO's have gained quite a bit of attention from their larger rivals by this point in time. Those rivals have the money, power, regulatory expertise and desire to shut down or diminish the positive influence PCO's have brought to bear on the market. They will be able to couch those arguments in the guise of open competition and the elimination of exclusivity, but that is not the final objective. While I believe PCO market share remains small, PCO's are an important economic "margin" influencing good service, product choice and innovation for MDU tenants.

I do not know how many PCO owners would share this potential ruling with their debt and equity capital providers and request they provide input to the FCC. Loan agreements for smaller companies like PCO's often contain default language associated with "material adverse changes", which this ruling may represent. Loans based on the value of contracts may be defaulted. Without question, negative attention would be cast toward PCO's by their capital providers even though the FCC has not reached a final ruling. Alternatively, PCO debt and equity capital providers may also serve the larger FCO's and others and be conflicted or fear reprisal (from these larger customers).

In any event, I appreciate the opportunity to comment on these important issues. Please contact me if I may be of further assistance.

Respectfully,

David Ligon
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